

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

RANDY RAND,

Plaintiff and Appellant,

v.

BOARD OF PSYCHOLOGY,

Defendant and Respondent.

C064475

(Super. Ct. No.
34200980000259CUWMGDS)

ORDER MODIFYING
OPINION AND DENYING
REHEARING; NO CHANGE
IN JUDGMENT

THE COURT

It is ordered that the opinion filed in this case on
May 10, 2012, be modified as follows:

1. Page 7, delete the first full sentence which begins
with "He" and ends in "Ives." Replace it with the following:
He communicated comfortably with Davis at hearings, but refused
to speak to Ives.

2. Page 27 (continuing to page 28), second full paragraph,
third sentence, delete the following parenthetical "(for
example, lunching with one while refusing to speak to the

other)" and replace it with: (for example, readily conversing with one while refusing to speak to the other).

3. Page 28, first full paragraph, first sentence, delete the words "or guidelines." The sentence now reads: Rand insists he cannot be sanctioned for unprofessional conduct under section 2960 because he did not violate any APA standards governing psychologists.

4. Page 30, delete the second full paragraph beginning with "Going" and ending with "objectivity." Replace with the following paragraph:

These standards, even if not directly applicable, gave Rand notice of the importance of objectivity in his professional conduct. Readily communicating with Davis but refusing to communicate with Ives and suing her using Davis's attorney, indicated that Rand was aligning himself with Davis, which had the potential to impair Rand's objectivity.

5. Delete two paragraphs beginning with "Furthermore, Rand overlooks" on page 30 and ending with "appropriately" on page 31, and replace with the following three paragraphs:

Furthermore, Rand overlooks that other ethical standards informed him of the importance of unbiased, objective behavior. Because his function as a special master included aspects of forensic psychology, Rand received guidance concerning what was considered professional conduct from APA Ethical Standard 2.01(f), which states: "When assuming forensic roles, psychologists are or become reasonably familiar with the judicial or administrative rules governing their roles." Either

Rand did not familiarize himself with the judicial rules mandating the appearance of impartiality, or he ignored them. Indeed, he did so even though the special master agreement, which was incorporated into the order appointing Rand, drew them to his attention by stating that he could be disqualified on any grounds applicable to the removal of a judge, arbitrator or referee. Code of Civil Procedure section 170.1, subdivision (a) provides a judge shall be disqualified if "(6) (A) For any reason: [¶] . . . [¶] (iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. [¶] (B) Bias or prejudice toward a lawyer in the proceeding may be grounds for disqualification."

In addition, canon 2 of the California Code of Judicial Ethics directs that a judge shall avoid the appearance of impropriety. According to canon 3B(4) "A judge shall be patient, dignified, and courteous to litigants" Canon 3B(5) states: "A judge shall perform judicial duties without bias or prejudice," and "shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice"

Rand also received guidance from APA Ethical Standard 2.01(e), which states: "In those emerging areas in which generally recognized standards for preparatory training do not yet exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect clients/patients, . . . and others from harm."

These modifications do not change the judgment.

The petition for rehearing is denied.

FOR THE COURT:

HULL, Acting P. J.

MAURO, J.